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CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1940.
No. 696

MILO W. BEKINS and REED J. BEKINS, as trustees, appointed by the will of Martin Bekins, deceased; MILO W. BEKINS and REED J. BEKINS, as trustees, appointed by the will of Katherine Bekins, deceased; JAMES IRVINE, J. R. MASON, JAMES H. JORDAN, A. HEBER WINDER, as trustee of Eva A. Parrington Trust; C. A. Moss, and H. E. CURTIS, creditors of Lindsay-Strathmore Irrigation District,

Petitioners,

v.

LINDSAY-STRATHMORE IRRIGATION DISTRICT, an insolvent taxing agency,

Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR CERTIORARI.

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Petitioners,

v.

LINDSAY-STRATHMORE IRRIGATION DISTRICT, an insolvent taxing agency,

Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR CERTIORARI.

Respondent is one of a number of California irrigation districts, the financial difficulties of which led to applications for relief under Chapter IX of the Bankruptcy Act. Respondent was the appellant in the case in which this

court determined the Act, as applied to such a district, to be a constitutional exercise of the bankruptcy power.[1] The plan of composition was confirmed by the trial court. [Opinion R. 131.] On appeal the judgment was affirmed. [R. 536.][2] In the Circuit Court, appeals from judgments confirming plans for the composition of the debts of this and four other irrigation districts, were argued and decided contemporaneously.[3] Certiorari has been denied in two of these cases.[4] Respondents contend: I, no reasons of the character required (Rule 38, Sub. 5) exist for granting certiorari in this case; II, all grounds urged in support of the petition, other than the fairness of the plan, have in effect been raised and disposed of by the denial of certiorari in the Merced and Corcoran cases; III, the plan is fair and equitable.

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(1) *United States v. Bekins* (1938), 304 U. S. 27.

(2) *Bekins v. Lindsay-Strathmore Irr. Dist.* (1940), 114 F. (2d) 680.

(3) *West Coast Life Ins. Co. v. Merced Irr. Dist.* (1940), C. C. A. 9, 114 F. (2d) 654. Cert. denied Jan. 6, 1941;

Moody v. James Irr. Dist. (1940) C. C. A. 9, 114 F. (2d) 685;

Newhouse v. Corcoran Irr. Dist. (1940), C. C. A. 9, 114 F. (2d) 690. Cert. denied Jan. 6, 1941;

Jordan v. Palo Verde Irr. Dist. (1940), C. C. A. 9, 114 F. (2d) 691.

(4) *West Coast Life Ins. Co. v. Merced Irr. Dist., supra; Newhouse v. Corcoran Irr. Dist., supra.*

ARGUMENT.

I.

No Reason for the Issuance of the Writ Appears.

The assertions made by the petitioners do not constitute a showing that the aims or purposes of certiorari would be served by the issuance of the writ here.

The previous decision of this court in this case[5] settles all principles of federal law controlling the decision here and the Circuit Court did not decide any new question of federal law.

In its previous decision in this case this court stated its inquiry to be— ". . . whether the exercise of the federal bankrupcy power in dealing with a composition of the debts of the Irrigation District upon its voluntary application and with the state's consent must be deemed to be an unconstitutional interference with the essential independence of the state, as preserved in the Constitution,"[6] and all of the elements of that question remain unchanged. Regardless of any of the subsequent decisions in the state court, this proceeding nevertheless remains (1) a composition proceeding; (2) voluntarily brought by the District in its capacity as a debtor treating with its creditors; (3) with the state's consent; and (4) under and in conformity with a constitutional bankruptcy act. Respondent submits it to be clear that a subsequent decision by the state court to the effect that an irrigation district cannot own land in a proprietary sense, does not unsettle or disturb, or conflict with any of the principles of law which controlled this court in its previous decision in this case, or the Circuit Court

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(5) *United States v. Bekins, supra.*
(6) *United States v. Bekins, supra,* at p. 49.

in the decision sought to be reviewed. In fact such decisions simply reiterate the view of the settled state law applied by the District Court in the decision[7] from which the appeal was previously taken to this court. It is not shown that the Circuit Court had occasion to or did decide any question of state law differently than the state court would have decided it, nor in what manner the subsequent decisions in the state court conflict with state law as it was established when this case was previously before this court.

On the other hand the decisions in all the federal courts[8] show a striking uniformity and agreement as to the controlling rules of law and it is submitted that noth-

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(7) *In re Lindsay-Strathmore Irrigation District* (1937), 21 F. Supp. 129, at 134 (6);
See, also, *In re Corcoran Irr. Dist.* (1939), 27 F. Supp. 322 at 328, comment on the state decisions.
Peoples State Bank v. Imperial Irrigation District, 15 Cal. (2d) 397.

(8) *Luehrmann v. Drainage Dist.* (1939), C. C. A. 8, 104 F. (2d) 696. Cert. denied (1939), 308 U. S. 604;
American Nat. Bank etc. v. City of Sanford (1940), C. C. A. 5, 112 F. (2d) 435. Cert. denied Oct. 14, 1940. 85 L. Ed. Adv. 70;
Davis v. City of Homestead (1940), C. C. A. 5, 112 F. (2d) 438. Cert. denied Oct. 14, 1940. 85 L. Ed. Adv. 70;
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Jordan v. Palo Verde Irr. Dist. (1940), C. C. A. 9, 114 F. (2d) 691;
Fano v. Newport Heights Irr. Dist. (1940), C. C. A. 9, 114 F. (2d) 563. Plan held unfair.

ing would be gained by the issuance of the writ here, except (1) a re-weighing of the evidence, and (2) the consequent re-examination, perhaps, of the Circuit Court's application of settled rules of law thereto.

The writ should not issue when its only purpose would be to re-examine disputed questions of fact or to preclude any theoretical possibility of error in the application of settled and accepted law.[9]

II.

All Grounds Urged in the Support of the Petition, Other Than the Fairness of the Plan, Have in Effect Been Considered and Disposed of by the Denial of Certiorari in Cases Presenting Identical Questions.

Upon consideration of this case in the court below, express reference was made in the court's opinion to the fact that many of the propositions relied upon by appellants there, petitioners here, for reversal had been expressly considered and rejected. Twelve points were urged in the court below, and of these all but three are answered by reference to the decision in the *Merced* case. [R. 539-540-542.] The three points not con-

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(9) *General Talking Pictures v. Western Electric* (1937), 304 U. S. 175;

See also, *Address By Hughes*, C. J. (1934), 20 Am. B. A. J. 341;

cluded by the *Merced* case but answered by the opinion in this case were: (1) Good faith of the District. The trial court found that the plan was filed in good faith. The contention of appellant to the contrary is dismissed with the statement that "There is no merit in appellant's contentions that the record does not sustain this finding." [R. 543.] (2) Fairness of the plan. The evidence is considered and the conclusion is reached that the amount offered under the plan "is all that the bondholders can reasonably expect under the circumstances." [R. 544.] Later herein there is set forth briefly, the circumstances supporting the finding that the plan is fair, just and equitable. (3) Findings of the court. The argument on this point was considered to be without substance. [R. 544.]

Insofar as petitioners seek to urge, as grounds for granting certiorari, erroneous determination of questions submitted to the court below, attention is therefore necessarily directed to the same points made in petitions for certiorari in the *Merced* and *Corcoran* cases. Examination of the petitions for certiorari and the accompanying briefs filed in the *Merced* and *Corcoran* cases will show that the petition in this case presents nothing new. This court has determined that the petitions in those cases present no sufficient grounds for review.

III.

The Plan Is Fair, Just and Equitable.

The court below, after reviewing the evidence, concludes: "The record contains tabulations of tax performance which clearly indicate the soundness of the trial court's finding that the proposed plan 'is in every respect fair, equitable and for the best interests of all creditors.' It seems clear to us that 59.978 cents on the dollar of principal amount of their bonds is all that the bondholders can reasonably expect in the circumstances." [R. 544.] The trial court considered at some length, the evidence of ability to pay and determined that the amount offered under the plan was all that the resources of the District would sustain. [R. 132-133.][10] Without financial assistance from the Reconstruction Finance Corporation it is clear no offer approaching that made under the plan would have been possible.

The District, for many years prior to July 1, 1933, met all its obligations, bonded indebtedness, heavy litigation expenses and costs of operation. Its inability to do so subsequent to that date is clearly explained by the record. The cultivated area within the District is planted almost exclusively to citrus fruits and approximately ninety per cent of the income of property owners within the District is derived from that source. [R. 303.] Prior to 1930 the average price per box received for oranges was $1.50 to $2.00. [R. 321.] Commencing with 1930 the price declined and the average for the five years preceding the hearing was in the neighborhood of 50 cents to 55 cents. [R. 321.] The ruinous fall of prices

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(10) *In re Lindsay-Strathmore Irr. Dist.* (1939), 25 F. Supp. 988.

is graphically shown by charts of actual returns to growers. [R. 305-315.] The gross returns of one packing association for the fruit of the same landowners fell from over $4,000,000 in 1930, to $1,115,000 in 1937 and never reached a total of $2,000,000 in any year after 1931. [R. 315.]

The result of this market condition was an average operation loss to landowners of $13.75 per acre over the eight years from 1930 to 1938. [R. 307.] Delinquency reached its peak of 47% in 1932. [R. 331.] Thereafter the District subjected itself to Section 11 of the California District Securities Commission Act and levied only such assessments as the lands were able to pay. [R. 332.] As a result of the delinquencies the District had acquired by tax deed in 1936, over 5,000 acres of land, more than one-third of the land within the District. [R. 331.] The total defaulted debt on October 1, 1938, was $967,920.57. [R. 327.] Bonds fell as low as 27 and at the time the application for a loan was granted were quoted at 31. [R. 358]. It is not difficult to understand from this picture why 87% of the credits [R. 350] welcomed the proposed offer of funds from Reconstruction Finance Corporation and voluntarily assented to the plan.

Petitioners concede [Pet. p. 13] that the District was not able to pay its obligations as they matured, but deny that it was insolvent in the sense that its assets were less than its liabilities. Reference is made to a financial statement showing "an excess of assets over liabilities of $731,544.06." [Pet. p. 13.] Examination of the statement shows that the assets consist almost wholly of "construction charges"—in other words the wells, canals, pipe lines, diversion and distribution works of the Dis-

trict capitalized at cost. These present no evidence of ability to pay nor can such assets be taken for the debts of the District. Brief of petitioners (p. 29) suggests value of the lands within the District as an asset and as evidence of solvency. But these lands could only be acquired through the process of assessment and inability of the landowner to pay could only result in continually mounting assessments on the paying acres, and a complete lack of market for the delinquent acres.[11]

Practically, and in the final analysis, there is but one source from which any creditor of the District may expect payment—income from the lands within the District. Ability to pay arises solely from this source and ability to pay determines the fairness of the plan.[12] Measured

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(11) *Provident Land Corporation v. Zumwalt* (1938), 12 Cal. (2d) 365, 85 P. (2d) 116, at 118:

"If delinquency occurs a higher assessment may be levied thereafter to make up the loss, and meanwhile the district may proceed to sell the land of the delinquent owner and buy it in. If a heavy delinquency occurs, the remaining land bears a correspondingly heavy burden, for every parcel is liable ultimately for the entire bonded indebtedness, and assessments may therefore be 'pyramided' on the land which is not in default. * * * Moreover, there were no purchasers for the lands taken in by the districts, because a new landowner would immediately become liable for assessments, which could be pyramided to any extent."

(12) Douglas—Democracy & Finance (1940), p. 226:

"The capacity of a debtor municipality or taxing district to pay, which is the supposed basis of any fair plan, is at best a matter of very technical estimate based on a great many problematical future variables. Even assuming possession of all the facts as of a certain date bearing on this capacity to pay, there is nevertheless always room for a very wide difference of estimates when that is projected over a future period of years."

by this test the record abundantly establishes that what the plan offers is all that the bondholders could reasonably expect to receive. It is submitted that the petition should be denied.

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Due service of the within Brief is hereby acknowledged this.....day of January, A. D. 1941.

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Attorneys for Petitioners.

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JAMES H. JORDAN, J. R. MASON, L. F. ABADIE, GEORGE F. COVELL and FIRST NATIONAL BANK OF TUSTIN (a corporation),

Petitioners,

vs.

PALO VERDE IRRIGATION DISTRICT, an Irrigation District,

Respondent.

Respondent's Brief in Opposition to Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

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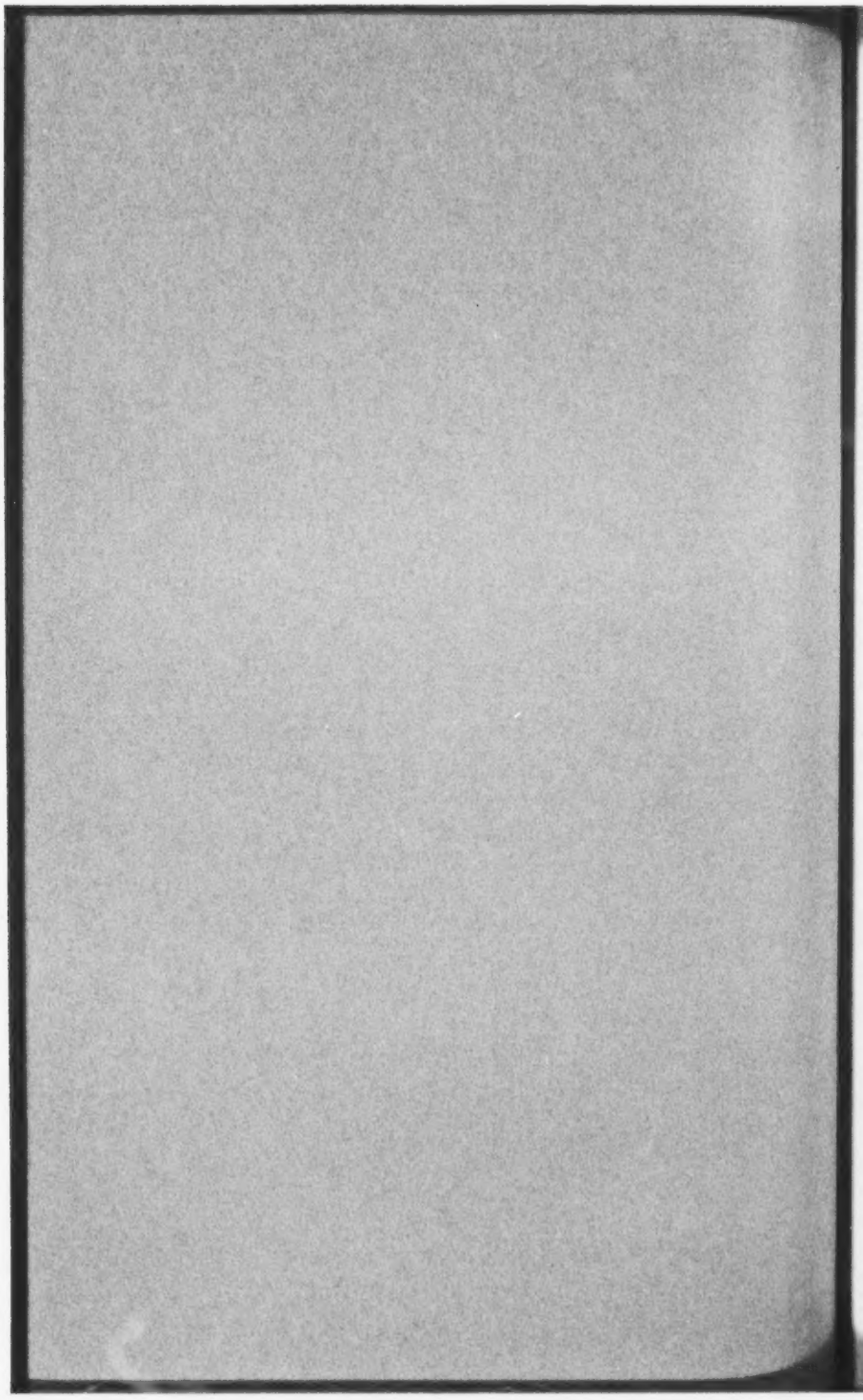

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PALO VERDE IRRIGATION DISTRICT, an Irrigation District,

Respondent.

Respondent's Brief in Opposition to Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

Statement of the Case.

Respondent, a California irrigation district, after undergoing a complete financial collapse, filed its petition for relief under present Chapter IX of the Bankruptcy Act. Its plan of composition was confirmed by the District Court [R. 134]. The interlocutory decree was affirmed by the Circuit Court of Appeals on September 20, 1940 [R. 378],

after an unusually exhaustive four-day argument of this and the following four companion cases:

West Coast Life Ins. Co. v. Merced Irrigation District, 114 F. (2d) 654. (Cert. denied Jan. 6, 1941, 85 L. ed. Adv. Op. 345) hereinafter called the "Merced" case;

Newhouse v. Corcoran Irr. Dis., 114 F. (2d) 690. (Cert. denied Jan. 6, 1941, 85 L. ed. Adv. Op. 345) hereinafter called the "Corcoran" case;

Moody v. James Irr. Dist., 114 F. (2d) 685. (Pet. for Cert. pending);

Bekins v. Lindsay-Strathmore Irr. Dist., 114 F. (2d) 680. (Pet. for Cert. pending).

Petition for rehearing was denied by the Circuit Court of Appeals on October 15, 1940 [R. 437]. Petitioners seek certiorari. Respondent respectfully submits that, after eliminating from the petition the grounds for certiorari which have been settled adversely to petitioners by this Court's denial of the writ in the *Merced* and *Corcoran* cases, *supra*, the petition discloses no reason, sufficient under Rule 38 and the practice of this Court, for which the writ should be granted.

The Essential Facts.

Palo Verde Irrigation District comprises 95,000 acres of alluvial river-bottom, riparian to the Colorado River in the easterly end of Riverside County, California [R. 4, 184]. The river lies on a plane above the valley. The climate is hot, with summer temperatures up to 122 degrees and arid, with average annual rainfall between two and three inches [R. 188]. In 1908 a Mutual Water Company laid out a canal system to irrigate the valley and a rudimentary levee to protect it [R. 185].

Gradual rising of the bed of the river led to floods in the valley and forced the organization in 1915 of a levee district and its issuance of bonds to construct extensive levees along the thirty-five mile river-front. The river bed continued to rise and floods recurred, the most disastrous of which, in 1922, inundated two-thirds of the valley [R. 185, 186].

In 1921 the pressure of water from the rising river caused a dangerously high water table in the valley, hence a drainage district was organized and bonded itself to construct a drainage system, so that farming might go on [R. 185].

For the purpose of reducing expense and coordination of effort, respondent irrigation district was formed in 1923, pursuant to a special act of the California legislature (Stat. Cal. 1923, p. 1067) which authorized the merger into respondent of the levee and drainage districts and its acquisition of the Mutual Water Company's irrigation system, but is otherwise patterned on the California Irrigation District Act. Respondent assumed the bonds of the three old entities and issued further bonds to reconstruct the broken levees and com-

plete the canal system. Respondent comprises all lands in the levee and drainage districts, which were practically coterminous [R. 4, 186].

The peak acreage in cultivation, in 1926, was 36,135 acres [R. 257]. To meet the district's load of debt, its tax rate steadily mounted, in 1928 and 1929 to around $17.00 per $100.00 assessed valuation [R. 258]. The farmers, paying out more than they took in from their crops, borrowed on any credit they had and paid until their credit was exhausted [R. 312]. Then they drifted from the land until in 1933 the acreage farmed had dwindled to 21,117, 58% of the maximum [R. 257].

The land delinquent for district taxes mounted as follows:

1927,	26.37	per cent
1928,	31.49	" "
1929,	55.76	" "
1930,	97.38	" "
1931,	99.28	" "
1932,	99.21	" " [R. 258].

In 1930 the district defaulted on its bonds, which totaled $4,174,330.36 [R. 194]. It energetically reduced its operating expenses by more than half and continued operations by collecting water tolls from the residue of the farmers remaining on the land [R. 252]. It unsuccessfully sought aid from Congress [R. 194, 195], but finally in 1934 obtained a conditional commitment for a loan from Reconstruction Finance Corporation (hereinafter called R. F. C.) [R. 201]. R. F. C. purchased from former

holders 96.76% of the bonds [R. 224]. Petitioners, on the other hand hold 1.88 per cent [R. 58, 59].

The market price of Palo Verde bonds in 1930 and 1931 was 10 to 14. From 1931 to 1933 it declined to 2 [R. 151].

After filing a proceeding under Section 80 of the Bankruptcy Act, dismissed because of unconstitutionality [R. 295, 298] the district commenced a proceeding under a state refinancing act, dismissed by the district [R. 148, 149] and finally the instant proceeding. On a full showing by the district, including testimony by qualified experts and practical farmers to facts supporting the fairness of the plan of composition and that it provided the limit for the bondholders that the land could bear [R. 286 to 324] and with practically no evidence offered by the bondholders, the District Court confirmed the plan.

The district has vigorously proceeded to restore its tax deeded lands to taxpaying. It comprises 95,000 acres. It has sold 49,000 acres to the former owners and up to 1937 an additional 4,500 acres to others, at auction [R. 271, 274]. The area in cultivation, by 1937, had been brought back to 32,000 acres [R. 253].

At the time of the trial, if the district were mandamused to levy a tax to pay all matured principal and interest on its bonds, $2,954,817.51, the tax rate necessary would be $112.17 per $100.00 assessed valuation [R. 267]. If this levy were paid in full the remaining debt would be $3,242,830.36 and the tax rates for the next eight years would be from $12.00 to $15.00 per $100.00 [R. 268]. Under such circumstances "there would be no farming at all. The farmers would abandon their places wholesale and try to get them a job" [R. 314].

ARGUMENT.

I.
The Issue.

The issue before the Court is whether or not the writ of certiorari should be granted. This brief is limited to that question. The merits of petitioners' claims of error are not involved and will not be discussed, except to illustrate their nature, as relating to the question whether the writ should issue.

II.
Grounds for Issuance of Writ.

Rule 38, Section 5 states the grounds for the issuance of certiorari to a Circuit Court of Appeals:

> "5. A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered:
>
> " . . . . . .
>
> "(b) (1) Where a circuit court of appeals has rendered a decision in conflict with the decision of another circuit court of appeals on the same matter; (2) or has decided an important question of local law in a way probably in conflict with applicable local decisions; (3) or has decided an important question of federal law which has not been, but should be,

settled by this court; (4) or has decided a federal question in a way probably in conflict with applicable decisions of this court; (5) or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision." (Numbers in parenthesis supplied.)

Ground (1) Petitioners do not pretend that the decision of the Circuit Court of Appeals herein is in conflict with those of other circuit courts of appeals. In fact, all the decisions on Chapter IX of the Bankruptcy Act have been strikingly consistent.

5TH CIRCUIT:

American National Bank of Nashville v. City of Sanford, 112 F. (2d) 435 (cert. denied October 14, 1940, 85 L. Ed. Adv. Op. 70);

Davis v. City of Homestead, 112 F. (2d) 438 (cert. denied October 14, 1940, 85 L. Ed. Adv. Op. 70);

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Getz v. Edinburg, 101 F. (2d) 734 (pet. for cert. dismissed on motion of petr., 308 U. S. 628).

8TH CIRCUIT:

Leuhrmann v. Drainage Dist. #7, 104 F. (2d) 696 (cert. denied, 308 U. S. 604).

9TH CIRCUIT:

West Coast Life Ins. Co. v. Merced Irrigation District, 114 F. (2d) 654 (cert. denied, 85 L. Ed. Adv. Op. 345);

Newhouse v. Corcoran Irr. Dist., 114 F. (2d) 690 (cert. denied, 85 L. Ed. Adv. Op. 345);

Moody v. James Irr. Dist., 114 F. (2d) 685 (pet. for cert. pending);

Bekins v. Lindsay-Strathmore Irr. Dist., 114 F. (2d) 680 (pet. for cert. pending);

Jordan v. Palo Verde Irr. Dist., 114 F. (2d) 691;

Fano v. Newport Heights Irr. Dist., 114 F. (2d) 563 (plan rejected as unfair).

Ground (2) Nor do petitioners assert that the court below has decided any question in conflict with applicable local decisions.

Ground (3) Petitioners do intimate (Petition, p. 17) that the court below has decided important questions of federal law which have not been, but should be, settled by this Court.

Ground (4) They do not contend that the decision below on a federal question conflicts with any decisions of this Court.

Ground (5) Nor do they contend that there has been any departure from "the accepted and usual course of judicial proceedings".

III.

Reasons for Issuance Claimed by Petitioners.

The reasons asserted by petitioners for the granting of the writ are nine (Petition, pp. 14 to 17). We examine these nine points in the light of Rule 38, above quoted.

1. Petitioners contend that the bankruptcy power cannot extend to respondent district because its functions are exclusively governmental. It is argued that recent decisions of the California Supreme Court as to the governmental character of such districts exclude respondent from the jurisdiction of Congress and the Federal Court in bankruptcy. This point was raised in the *Merced* case (Petitioners' Brief, Point XI) and in the *Corcoran* case (Petitioners' Brief, Point V) and denied by this Court. The last decision of the Supreme Court of California is wholly in accord with the decisions of this Court in the *Merced* and *Corcoran* cases and in *United States v. Bekins,* 304 U. S. 27.

Peoples State Bank v. Imperial Irr. Dist., 15 Cal. (2d) 397, 399, 402, decided April 16, 1940.

2. Petitioners contend that *res judicata* applies, by reason of the decision in the respondents' first bankruptcy case. The precise point was raised in the *Merced* case (Petitioners' Brief, Point VI) and denied by this Court.

3. Petitioners argue that R. F. C. is a pledgee and not an owner of bonds and therefore could not vote for the plan of composition. The same point was raised in the *Merced* case (Petitioners' Brief, Points VII and VIII) and in the *Corcoran* case (Petitioners' Brief, Point III) and was denied by this Court.

4. Petitioners raise the bar of an action pending under state law. The same contention was raised in the *Merced* case (Petitioners' Brief, Point X), and denied by this Court.

5. Petitioners say that a plan is not fair "which seeks to pay less than the amount of the principal where the assets exceed the debts." This identical point was raised in the *Merced* case (Petitioners' Brief, Points III (g) and V) and denied by this Court. They further argue that "where there are no remaining landowners," the creditors should get all the assets—presumably, the land itself. It is not true, as petitioners assert, that the District owns all of the land. In the years intervening since it took tax title to 99% of the land, it has resold to the former owners and others, for nominal amounts, 53,500 acres of the 95,000 acres in the District [R. 271, 274]. They also urge that the plan is not fair because it does not cover overlapping county and city bonds. The same contention was made as a claim of unconstitutional discrimination in the *Corcoran* case (Petitioners' Brief, Point II) and was denied by this Court. In other contentions raised by the petitioners in their brief under this head they merely dispute the findings of the two lower courts on various elements of conflicting evidence.

6. Petitioners contend that the plan is not fair because it offers to all creditors 24.81 cents per dollar and holders of $170,000 of claims were actually paid 50 cents on the dollar. Petitioners misconstrue the facts. The bondholders referred to held bonds of the Mutual Water Company, which had been assumed by respondent, and which were secured by that private corporation's trust deed. They had, therefore, an entirely different remedy by foreclosure than the holders of District bonds. On this account the latter voluntarily sold their bonds to Reconstruction Finance Corporation for 23.248 cents per dollar, thus allowing a differential which built up the payment to the Mutual Water Company bondholders to 50 cents per dollar. This was purely a matter of agreement [R.

223, 224]. It had no bearing upon the plan or the proceedings in this composition case, which were uniformly based upon the figure of 24.81 cents per dollar. This was the average of the amounts disbursed by R. F. C. to all bondholders whose bonds it purchased. No discrimination has, therefore, been practiced upon any bondholder by the Court.

7. Petitioners urge that the plan was not in good faith, because respondent "contributed to the purchase" of the bonds by R. F. C. This is pure distortion of evidence. What respondent did was to pay the incidental expenses of the escrow in which the bonds were transferred to R. F. C. [R. 177]. R. F. C. paid the purchase price.

8. Petitioners argue that because a public trust is involved, the bankruptcy court could not make any decree. If so, the Municipal Composition Act would be a nullity, and this Court has held it was not. They also insist that since two of them have gained certain judgments on bonds from which appeals are pending, and an alternative writ of mandate, in a case which has never gone to trial, they have untouchable vested rights. The contrary is held in *Vallette v. City of Vero Beach,* 104 F. (2d) 59 (cert. denied, 308 U. S. 586).

9. Petitioners argue that their pleading of objections in the trial court is a sufficient foundation, without presentation of argument thereon to the trial court, to entitle them to claim error in the Circuit Court of Appeals. In its opinion herein, the Circuit Court of Appeals remarks that nine of the fourteen grounds for reversal urged in that court were not urged in the trial court. Nevertheless, it meticulously proceeds to examine and rule upon each of the fourteen points. Petitioners have had their day in court.

IV.

Petitioners' "Reasons" Are Insufficient.

The nine reasons urged by petitioners are described by them (Petitioners' Brief, p. 17) as "of great importance as affecting the proper administration of the Municipal Bankruptcy Law." They are therefore urged solely under the third ground stated in Rule 38, Section 5, Subdivision (b). Points 1, 2, 3, 4 and part of 5 have been settled by this Court in denying certiorari in the *Merced* and *Corcoran* cases. The remaining points are mainly based on the peculiar facts of the instant case. None of them presents a situation which is involved in a great number of cases or is likely to be so involved in the future. None has any general, widespread or basic public importance.

As Chief Justice Taft said, in *Magnum Importing Co. v. Coty*, 262 U. S. 159, 163, "The jurisdiction to bring up cases by certiorari from a circuit court of appeals was given for two purposes: first, to secure uniformity of decisions between those courts in the nine circuits, and second, to bring up cases involving questions of importance which it is in the public interest to have decided by this Court of last resort. The jurisdiction was not conferred upon this Court merely to give the defeated party in the Circuit Court of Appeals another hearing."

The points relied upon by petitioners which have not been ruled on by this Court are points in ordinary litigation, resting upon and limited to the particular facts of the individual case, for which the Circuit Courts of Appeals "are, and must be, courts of last resort, . . .," Frank-

furter and Hart, 48 Harvard Law Review, 238, 260, *et seq.* They do not possess the character of "importance" which will move this Court to take jurisdiction. The application for certiorari is one of the 80% of such applications made with what the Chief Justice has called "an utter absence of any good reason for asking our review," Hughes, C. J., address before American Law Institute, 20 American Bar Assn. Journal, 341.

The writ should not issue when its purpose would be merely the re-examination of questions of fact under conflicting evidence or the scrutinizing of the Circuit Court's application of settled rules of law thereto. It is respectfully submitted that the petition should be denied.

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of
STEWART, SHAW & MURPHEY,
Counsel for Respondents.

Due service of the within Brief is hereby acknowledged this.....day of February, A. D. 1941.

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Attorneys for Petitioners.

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